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8
9 **BEFORE THE**
BOARD OF REGISTERED NURSING
10 **DEPARTMENT OF CONSUMER AFFAIRS**
11 **STATE OF CALIFORNIA**

12 In the Matter of the Accusation Against:

Case No.

2010-141

13 PAMELA BRANDY RICO
11110 El Capitan Drive
14 Madera, CA 93638

A C C U S A T I O N

15 Registered Nurse License No. 518955
Nurse Practitioner Certificate No. 14745
16 Nurse Practitioner Furnishing Certificate No. 14745

17 Respondent.

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19 Complainant alleges:

20 **PARTIES**

21 1. Louise R. Bailey, M. Ed., R.N. ("Complainant") brings this Accusation
22 solely in her official capacity as the Interim Executive Officer of the Board of Registered
23 Nursing ("Board"), Department of Consumer Affairs.

24 **Registered Nurse License No. 518955**

25 2. On or about February 1, 1996, the Board issued Registered Nurse License
26 Number 518955 to Pamela Brandy Rico ("Respondent"). Respondent's registered nurse license
27 was in full force and effect at all times relevant to the charges brought herein and will expire on
28 September 30, 2011, unless renewed.

1 **Nurse Practitioner Certificate No. 14745**

2 3. On or about February 10, 2004, the Board issued Nurse Practitioner
3 Certificate Number 14745 to Respondent. Respondent's nurse practitioner certificate was in full
4 force and effect at all times relevant to the charges brought herein and will expire on September
5 30, 2011, unless renewed.

6 **Nurse Practitioner Furnishing Certificate No. 14745**

7 4. On or about November 1, 2004, the Board issued Nurse Practitioner
8 Furnishing Certificate Number 14745 to Respondent. Respondent's nurse practitioner furnishing
9 certificate was in full force and effect at all times relevant to the charges brought herein and will
10 expire on September 30, 2011, unless renewed.

11 **STATUTORY PROVISIONS**

12 5. Business and Professions Code ("Code") section 2750 provides, in
13 pertinent part, that the Board may discipline any licensee, including a licensee holding a
14 temporary or an inactive license, for any reason provided in Article 3 (commencing with section
15 2750) of the Nursing Practice Act.

16 6. Code section 2764 provides, in pertinent part, that the expiration of a
17 license shall not deprive the Board of jurisdiction to proceed with a disciplinary proceeding
18 against the licensee or to render a decision imposing discipline on the license. Under Code
19 section 2811, subdivision (b), the Board may renew an expired license at any time within eight
20 years after the expiration.

21 7. Code section 2761, subdivision (a), states, in pertinent part, that the Board
22 may take disciplinary action against a certified or licensed nurse for unprofessional conduct.

23 8. Code section 2762 states, in pertinent part:

24 In addition to other acts constituting unprofessional conduct within the
25 meaning of this chapter [the Nursing Practice Act], it is unprofessional conduct
26 for a person licensed under this chapter to do any of the following:

26 (a) Obtain or possess in violation of law, or prescribe, or except as
27 directed by a licensed physician and surgeon, dentist, or podiatrist administer to
28 himself or herself, or furnish or administer to another, any controlled substance as
 defined in Division 10 (commencing with Section 11000) of the Health and
 Safety Code or any dangerous drug or dangerous device as defined in Section

1 4022 . . .

2 9. Code section 4060 states:

3 No person shall possess any controlled substance, except that furnished to
4 a person upon the prescription of a physician, dentist, podiatrist, optometrist,
5 veterinarian, or naturopathic doctor pursuant to Section 3640.7, or furnished
6 pursuant to a drug order issued by a certified nurse-midwife pursuant to Section
7 2746.51, a nurse practitioner pursuant to Section 2836.1, a physician assistant
8 pursuant to Section 3502.1, a naturopathic doctor pursuant to Section 3640.5, or
9 a pharmacist pursuant to either subparagraph (D) of paragraph (4) of, or clause
10 (iv) of subparagraph (A) of paragraph (5) of, subdivision (a) of Section 4052.
11 This section shall not apply to the possession of any controlled substance by a
12 manufacturer, wholesaler, pharmacy, pharmacist, physician, podiatrist, dentist,
13 optometrist, veterinarian, naturopathic doctor, certified nurse-midwife, nurse
14 practitioner, or physician assistant, when in stock in containers correctly
15 labeled with the name and address of the supplier or producer.

16 Nothing in this section authorizes a certified nurse-midwife, a nurse
17 practitioner, a physician assistant, or a naturopathic doctor, to order his or
18 her own stock of dangerous drugs and devices.

12 10. Code section 4022 states:

13 "Dangerous drug" or "dangerous device" means any drug or device unsafe
14 for self-use in humans or animals, and includes the following:

15 (a) Any drug that bears the legend: "Caution: federal law prohibits
16 dispensing without prescription," "Rx only," or words of similar import.

17 (b) Any device that bears the statement: "Caution: federal law restricts this
18 device to sale by or on the order of a -----," "Rx only," or words of similar
19 import, the blank to be filled in with the designation of the practitioner licensed to
20 use or order use of the device.

21 (c) Any other drug or device that by federal or state law can be lawfully
22 dispensed only on prescription or furnished pursuant to Section 4006.

23 11. Health and Safety Code section 11170 states that no person shall
24 prescribe, administer, or furnish a controlled substance for himself.

25 12. Health and Safety Code section 11173, subdivision (a), states, in pertinent
26 part:

27 No person shall obtain or attempt to obtain controlled substances, or
28 procure or attempt to procure the administration of or prescription for controlled
substances, (1) by fraud, deceit, misrepresentation, or subterfuge . . .

COST RECOVERY

27 13. Code section 125.3 provides, in pertinent part, that the Board may request
28 the administrative law judge to direct a licensee found to have committed a violation or

1 violations of the licensing act to pay a sum not to exceed the reasonable costs of the investigation
2 and enforcement of the case.

3 **CONTROLLED SUBSTANCES AND DANGEROUS DRUGS AT ISSUE**

4 14. "Darvocet", a brand of propoxyphene napsylate, is a Schedule IV
5 controlled substance as designated by Health and Safety Code section 11057, subdivision (c)(2).

6 15. "Cyclobenzaprine", a muscle relaxant sold under the brand name,
7 "Flexeril", is a dangerous drug within the meaning of Code section 4022 in that it requires a
8 prescription under federal law.

9 16. "Proventil HFA", a brand name for the generic medication albuterol, a
10 bronchodilator, is a dangerous drug within the meaning of Code section 4022 in that it requires a
11 prescription under federal law.

12 17. "Tobramycin", a brand name for the generic medication tobrex, an
13 ophthalmic antibiotic, is a dangerous drug within the meaning of Code section 4022 in that it
14 requires a prescription under federal law.

15 18. "Asmanex Twisthaler", a brand name for the generic medication
16 mometasone inhalation, a steroid and asthma preventative, is a dangerous drug within the
17 meaning of Code section 4022 in that it requires a prescription under federal law.

18 19. "Topamax", a brand name for the generic medication topiramate, an
19 anticonvulsant, is a dangerous drug within the meaning of Code section 4022 in that it requires a
20 prescription under federal law.

21 20. "Spironolactone", a diuretic sold under the brand name, "Aldactone", is
22 a dangerous drug within the meaning of Code section 4022 in that it requires a prescription under
23 federal law.

24 21. "Cephalexin", an antibiotic sold under the brand name, "Keflex", is
25 a dangerous drug within the meaning of Code section 4022 in that it requires a prescription under
26 federal law.

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1 **CAUSE FOR DISCIPLINE**

2 **(Unlawful Obtaining, Possession, Prescription, Furnishing and**
3 **Self-Administration of Controlled Substances and Dangerous Drugs)**

4 22. Respondent is subject to disciplinary action pursuant to Code section
5 2761, subdivision (a), on the grounds of unprofessional conduct, as defined by Code section
6 2762, subdivision (a), in that on and between May 11, 2006, and June 6, 2008, while employed
7 as a nurse practitioner for Primary Care Consultants, Oakhurst, California, Respondent did the
8 following:

9 **Prescription or Furnishing of Controlled Substances and Dangerous Drugs:**

10 a. Respondent prescribed or furnished the controlled substance Darvocet and
11 dangerous drugs cyclobenzaprine, Proventil HFA, Tobramycin, Asmanex Twisthaler, Topamax,
12 spironolactone, and cephalexin for herself, in violation of Health and Safety Code section 11170,
13 as follows:

14 1. On or about May 11, 2006, Respondent called in a prescription for
15 90 tablets of cyclobenzaprine 10 mg to Rite Aid Pharmacy located in Oakhurst,
16 California (hereinafter "pharmacy") for herself under the name of her supervising
17 physician, Dr. K. B., when, in fact, Dr. K. B. never prescribed medications for
18 Respondent or any other employee.

19 2. On or about June 16, 2006, Respondent called in a prescription for
20 90 tablets of cyclobenzaprine 10 mg to the pharmacy for herself under the name of her
21 supervising physician, Dr. K. B., when, in fact, Dr. K. B. never prescribed medications
22 for Respondent or any other employee.

23 3. On or about September 27, 2006, Respondent called in a
24 prescription for 90 tablets of cyclobenzaprine 10 mg to the pharmacy for herself under
25 the name of her supervising physician, Dr. K. B., when, in fact, Dr. K. B. never
26 prescribed medications for Respondent or any other employee.

27 4. On or about November 17, 2006, Respondent called in a
28 prescription for a Proventil HFA inhaler to the pharmacy for herself under the name of

1 her supervising physician, Dr. K. B., when, in fact, Dr. K. B. never prescribed
2 medications for Respondent or any other employee.

3 5. On or about December 21, 2006, Respondent called in a
4 prescription for Tobramycin eye drops for herself under the name of her supervising
5 physician, Dr. K. B., when, in fact, Dr. K. B. never prescribed medications for
6 Respondent or any other employee.

7 6. On or about March 14, 2007, Respondent called in a prescription
8 for 90 tablets of cyclobenzaprine 10 mg to the pharmacy for herself under the name of
9 her supervising physician, Dr. K. B., when, in fact, Dr. K. B. never prescribed
10 medications for Respondent or any other employee.

11 7. On or about May 16, 2007, Respondent wrote a prescription for
12 Asmanex Twisthaler for herself under the name of her supervising physician, Dr. K. B.,
13 then presented the prescription to the pharmacy to have it filled. In fact, Dr. K. B. never
14 prescribed medications for Respondent or any other employee.

15 8. On or about May 25, 2007, Respondent called in a prescription for
16 Asmanex Twisthaler to the pharmacy for herself under the name of her supervising
17 physician, Dr. K. B., when, in fact, Dr. K. B. never prescribed medications for
18 Respondent or any other employee.

19 9. On or about May 31, 2007, Respondent called in a prescription for
20 42 tablets of Topamax 25 mg to the pharmacy for herself under the name of her
21 supervising physician, Dr. K. B., when, in fact, Dr. K. B. never prescribed medications
22 for Respondent or any other employee.

23 10. On or about October 19, 2007, Respondent called in prescriptions
24 for 90 tablets of cyclobenzaprine 10 mg and 60 tablets of spironolactone 50 mg to the
25 pharmacy for herself under the name of her supervising physician, Dr. K. B., when, in
26 fact, Dr. K. B. never prescribed medications for Respondent or any other employee.

27 11. On or about January 2, 2008, Respondent called in prescriptions
28 for 30 tablets of Darvocet 650 mg and 56 tablets of cephalexin 500 mg to the pharmacy

1 for herself under the name of her supervising physician, Dr. K. B., when, in fact, Dr.
2 K. B. never prescribed medications for Respondent or any other employee.

3 12. On or about April 7, 2008, Respondent called in a prescription for
4 90 tablets of cyclobenzaprine 10 mg to the pharmacy for herself under the name of her
5 supervising physician, Dr. K. B., when, in fact, Dr. K. B. never prescribed medications
6 for Respondent or any other employee.

7 13. On or about June 6, 2008, Respondent called in a prescription for
8 90 tablets of cyclobenzaprine 10 mg to the pharmacy for herself under the name of her
9 supervising physician, Dr. K. B., when, in fact, Dr. K. B. never prescribed medications
10 for Respondent or any other employee.

11 **Unlawfully Obtain a Controlled Substance:**

12 b. On or about January 2, 2008, Respondent obtained the controlled
13 substance Darvocet by fraud, deceit, misrepresentation, or subterfuge, in violation of Health and
14 Safety Code section 11173, subdivision (a), as set forth in subparagraph (a)(11) above.

15 **Possession of a Controlled Substance:**

16 c. On or about January 2, 2008, Respondent possessed 30 tablets of the
17 controlled substance Darvocet without a valid prescription from a physician, dentist, podiatrist,
18 optometrist, veterinarian, or naturopathic doctor, in violation of Code section 4060.

19 **Self-Administration of Controlled Substances and Dangerous Drugs:**

20 d. On and between May 11, 2006, and June 6, 2008, Respondent self-
21 administered the controlled substance Darvocet and dangerous drugs cyclobenzaprine, Proventil
22 HFA, Tobramycin, Asmanex Twisthaler, Topamax, spironolactone, and cephalexin without
23 lawful authority therefor.

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1 **PRAYER**

2 WHEREFORE, Complainant requests that a hearing be held on the matters herein
3 alleged, and that following the hearing, the Board of Registered Nursing issue a decision:

4 1. Revoking or suspending Registered Nurse License Number 518955,
5 issued to Pamela Brandy Rico;


6 2. Revoking or suspending Nurse Practitioner Certificate Number 14745,
7 issued to Pamela Brandy Rico;

8 3. Revoking or suspending Nurse Practitioner Furnishing Certificate Number
9 14745, issued to Pamela Brandy Rico;

10 4. Ordering Pamela Brandy Rico to pay the Board of Registered Nursing the
11 reasonable costs of the investigation and enforcement of this case, pursuant to Business and
12 Professions Code section 125.3;

13 5. Taking such other and further action as deemed necessary and proper.

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15 DATED: 9/10/09

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18 LOUISE R. BAILEY, M. Ed., R.N.
19 Interim Executive Officer
20 Board of Registered Nursing
21 Department of Consumer Affairs
22 State of California
23 Complainant
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